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IN THE SUPREME COURT
OF THE
UNITED STATES

October Term 1977

NO. 76-1441

HEUBLEIN, INC. AND UNITED VINTNERS, INC.,
Petitioners,

vs.

LAUREL WATERS and
THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The petitioners, Heublein, Inc., and United Vintners, Inc., respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on November 12, 1976.

OPINIONS BELOW

The opinion of the Court of Appeals, not yet reported, appears in an Appendix hereto, along with the memorandum of opinion rendered by the United States District Court for the Northern District of California.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered November 12, 1976. A timely petition for rehearing en banc was denied January 14, 1977, and this petition for certiorari was filed within 90 days of that date. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

QUESTIONS PRESENTED

1. Whether a Caucasian female who is not a member of any racial or ethnic minority group

has standing to sue to redress alleged racial and ethnic discrimination in employment under Title VII of the Civil Rights of 1964.

2. Whether Title VII of the Civil Rights Act of 1964 creates a right to sue for injury because of an alleged non-integrated "working environment" which has no effect on the plaintiff's employment opportunities.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The statute involved in this petition is Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., in addition to Article III of the Constitution of the United States. The constitutional provision and relevant sections of the 1964 Civil Rights Act are attached hereto as Appendix C.

STATEMENT OF THE CASE

On July 4, 1973, respondent Laurel Waters ("Waters") filed an action in the United States District Court for the Northern District of California against petitioners United Vintners, Inc. ("United Vintners") and its parent corporation,

Heublein, Inc. ("Heublein"). Waters, a female Caucasian and a former United Vintners employee, invoked the jurisdiction of the District Court under Section 706(f)(3) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(f)(3).

In her complaint, Waters alleged, inter alia, that United Vintners and Heublein violated Title VII by discriminating on the basis of sex, race and national origin, and purported to represent a nationwide class of all persons who are, have been or will be denied equal employment opportunities on the basis of sex, race, color or national origin.

On August 1, 1973, petitioners moved, inter alia, to dismiss the action insofar as it alleged discrimination against racial and ethnic minorities, on the grounds that Waters, a Caucasian female, lacked standing to assert such claims. On November 16, 1973, the District Court, by the Honorable Albert C. Wollenberg, dismissed the race and national origin discrimination claims, with leave to file an amended complaint. On December 7, 1973, Waters filed an amended complaint, again alleging claims of discrimination on the basis of race, color and national origin. The amended complaint differed from the original

complaint only in its additional allegation that Waters had herself been injured by alleged racial and ethnic discrimination, by being deprived of interracial associations in her work environment. Petitioners again moved to dismiss the claims alleging discrimination on the basis of race, color or national origin.

The Equal Employment Opportunity Commission ("EEOC") moved to intervene pursuant to Section 706(f)(1) and on May 24, 1974 the District Court granted EEOC's motion on the condition that intervention was limited to claims which could be maintained by Waters.

On June 27, 1974, the District Court dismissed the claims in the amended complaint alleging discrimination against racial and ethnic minorities, on the ground that plaintiff had no standing to complain of discrimination against racial and ethnic groups, and that the social and psychological injuries allegedly resulting from injuries to her working environment were not cognizable under Title VII:

> This Court is not persuaded . . . that Congress sought through Title VII to protect whatever interest white persons might have in working in an environment which is free from discrimination

against racial and ethnic minorities.[1] Unlike Title VIII, which was intended to change living environments for all by changing housing patterns through ending housing discrimination, Title VII is aimed at lifting economically persons belonging to racial and ethnic minorities by providing equal access to employment opportunities. See Developments In The Law--Employment Discrimination and Title VII, 84 Harv. L.Rev. 1109, 1114 (1971). Persons who are not the objects of racial or ethnic discrimination in employment are not within the zone of interests Congress intended to protect with Title VII. Accordingly, the complaint will be dismissed insofar as it alleges a cause of action based on discrimination against racial and ethnic minorities.

1. "The various rules of standing applied by federal courts have not been developed in the abstract. Rather they have been fashioned with specific reference to the status asserted by the party whose standing is challenged and as to the type of question he wishes to have adjudicated." Flast v. Cohen, supra at 101.

Appendix B at B-6.

Waters and the EEOC took an interlocutory appeal to the Court of Appeals for the Ninth Circuit pursuant to 28 U.S.C. Section 1292(a),

on the issue of Waters' standing to sue for alleged racial and ethnic discrimination. On November 12, 1976, the appellate court issued its decision, reversing the District Court and holding that Waters had standing to sue to redress racial and ethnic discrimination. Relying on this Court's decision in Trafficante v. Metropolitan Life Insurance Co., 409 U.S. 205 (1972), which concerned discrimination in housing under Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3610 et seq., the Court of Appeals determined that a "person aggrieved" under Title VII included persons not themselves the objects of discrimination who allege injury from the loss of interpersonal contacts at work with members of different races. (Appendix B)

Petitioners' petition for rehearing en banc was denied by the Court of Appeals for the Ninth Circuit on January 14, 1977.

By orders dated February 2, 1977 and March 3, 1977, the mandate of the Court of Appeals, pursuant to its decision of November 12, 1976, has been stayed until April 13, 1977 pending the filing, consideration and disposition of the within petition for writ of certiorari.

Petitioners now seek review of the decision by the Ninth Circuit panel on the grounds that the opinion presents a question of first impression regarding the scope and purpose of a major civil rights statute, which question must be definitively determined by this Court. It is respectfully submitted that the opinion below constitutes an unprecedented expansion of the statute's ambit which is inconsistent with prior decisions of this Court. Petitioners further submit that the opinion below has significance beyond this case and will have a recurring adverse effect on future Title VII actions.

REASONS FOR GRANTING THE WRIT

I

THE COURT BELOW HAS DECIDED AN IMPORTANT QUESTION OF FIRST IMPRESSION REGARDING THE SCOPE OF TITLE VII WHICH SHOULD BE DECIDED DEFINITIVELY BY THIS COURT.

A. The Decision Below Constitutes An Unprecedented Expansion of the Scope of Title VII.

Section 706(f)(1) of the 1964 Civil Rights Act, 42 U.S.C. § 2000e-5(f)(1), provides that "persons claiming to be aggrieved" by an alleged unlawful employment practice may bring an action in the district court once certain administrative requirements have been met. Employment practices which are prohibited by the Act are defined in Section 703 (42 U.S.C. § 2000e-2). With respect to practices of an employer which are deemed unlawful, the statute speaks to acts which deprive an employee of employment opportunities or adversely affect his status as an employee because of his race, color, religion, sex or national origin.

In holding that a Caucasian female has standing to assert claims of racial and ethnic discrimination, the Court of Appeals for the Ninth Circuit has held that the definition of an "aggrieved person" under Title VII includes not only the employee directly injured in his employment opportunities, but also persons not themselves the objects of discrimination who allege injury from working in a non-integrated environment. This extension of the class of persons who have standing to sue under Title VII is an unprecedented expansion of the scope and purpose of the statute and creates an entirely new right of action for injury to an employee's "working environment."

Although the court below asserts that its decision "makes no new law" (Appendix A at A-9), the opinion cites no other decision by any court that could support its holding that Title VII contemplates claims for injury to one's working environment. In fact, no district court or court of appeals has held that persons who are not the object of racial or ethnic discrimination have standing to assert claims for such discrimination, and no court has indicated that

claims of injury to a working environment are cognizable under Title VII.[1]

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1. It must be stressed that the decision below does not concern a minority employee alleging a discriminatory environment consisting of harassment, intimidation or derogation aimed at that person because of his race [cf. EEOC Decision No. 71-909, 3 F.E.P. 269 (1970); EEOC Decision No. 71-2598, 4 F.E.P. 21 (1971)], or a minority employee alleging injury from discriminatory treatment. Cf. Gray v. Greyhound Lines, East, 545 F.2d 169, 176 (D.C. Cir. 1976). Nor does this case involve discrimination because of association with minorities [(cf. Fanaca v. Clements, 10 F.E.P. 718 (N.D. Ga. 1973), aff'd, 506 F.2d 956 (5th Cir.), cert. den., 422 U.S. 1006 (1975)], or an organization seeking minority participation in municipal government on behalf of its members. Cf. League of U. Latin Am. Citizens v. City of Santa Ana, 410 F. Supp. 873, 891 (C.D. Cal. 1976).

The sole issue herein is whether a Caucasian female can sue to redress racial or ethnic discrimination under Title VII on vague allegations of injury because of deprivation of interracial associations at work. The only other court which has considered this particular issue followed the District Court herein to dismiss claims of racial and ethnic discrimination asserted by a Caucasian female. Bradshaw v. Zoological Society, 10 F.E.P. 1268, 1271 (C.D. Cal. 1975).

Thus, the circuit court's novel interpretation of the standing requirements of Title VII and the expansion of the statute to include a right of action for the "loss of . . . benefits of interracial associations" at work presents a question of first impression of paramount importance and far-reaching implications: the scope and meaning of a major civil rights statute. Petitioners submit that this question is one which must be definitively decided by this Court and certiorari should be granted for this purpose.

B. This Court Should Determine Whether Title VII Encompasses Injury From A Non-Integrated Work Environment Which Does Not Affect Employment Opportunity.

Decisions of this Court have made it clear that the concept of standing to sue concerns both the status of the party seeking judicial intervention[2] and whether the interests sought to be protected are within the zone of interests to be protected or regulated by the statute in

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2. Discussed infra at 19.

question. Association of Data Processing Service Organizations v. Camp, 397 U.S. 150, 153 (1970); Barlow v. Collins, 397 U.S. 159, 164 (1970). The interests which Congress intended to protect with enactment of Title VII are clear from a plain reading of the statute itself: the employment opportunities of those who have been subject to discrimination on the basis of race, color, religion, sex or national origin. This purpose is effectuated by prohibition of employment practices which may deprive any individual of employment opportunities or otherwise affect one's status as an employee because of his membership in a protected class. Section 703, 42 U.S.C. § 2000e-2.

The overriding statutory purposes of Title VII have frequently been articulated by this Court. In the words of Griggs v. Duke Power Co., 401 U.S. 424 (1971):

> The objective of Congress in the enactment of Title VII is plain from the language of the statute. It was to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of white employees over other employees. . . . What is required by Congress is the removal of artificial, arbitrary and unnecessary barriers to employment when the barriers operate individually to discriminate on the basis of racial or other impermissible classification.

Id. at 429-30.

This statutory objective was reaffirmed last Term in Franks v. Bowman Transportation Co., 424 U.S. 747, 44 U.S.L.W. 4365 (1976):

> [I]n enacting Title VII of the Civil Rights Act of 1964, Congress intended to prohibit all practices in whatever form which create inequality in employment opportunity due to discrimination on the basis of race, religion, sex, or national origin . . . .

424 U.S. at ____, 44 U.S.L.W. at 4360. See also Alexander v. Gardner-Denver Co., 415 U.S. 36, 44 (1974); McDonnell-Douglas Corp. v. Green, 411 U.S. 792, 800 (1972).

The remedial provisions of the Act reveal an interrelated statutory purpose, to "make persons whole for injuries suffered on account

of unlawful employment discrimination." Albemarle Paper Co. v. Moody, 422 U.S. 405, 418 (1975).

In neither of these statutory objectives is there any indication that Congress intended to protect a Caucasian employee's interests in interracial associations as a part of his work environment. Nor does the language of the statute raise any implication that injury to a "working environment" is cognizable under the Act; rather, the statute speaks directly to employment opportunities and the status of an individual as an employee. As the District Court herein ruled, the indirect injuries alleged by Waters are not within the zone of interests Congress intended to protect with Title VII.

Yet the Court of Appeals for the Ninth Circuit held that Title VII protects an employee's right to interpersonal contacts between persons of different races and thus a Caucasian has standing to redress employment discrimination directed not against him but against other employee groups of which he is not a member. In so holding, the court relied exclusively on this Court's decison in Trafficante v. Metropolitan Life Insurance Co., 409 U.S. 205 (1972).

Trafficante arose under the 1968 Civil Rights Act, 42 U.S.C. §§ 3610 et seq., and involved whether white tenants could complain of racial discrimination in housing. Focusing on the broad statutory definition of "persons aggrieved" contained in that particular statute, and on the clear congressional purpose behind the 1968 Act indicating an intent to protect the interests of all members of the community in an integrated environment, this Court held that Title VIII of the 1968 Act had created an actionable right to be free from the adverse consequences of racially discriminatory practices directed at and immediately harmful to others, and thus white tenants had standing to sue for racial discrimination aimed at non-white applicants.

Ignoring the underlying premises of the Trafficante decision, the court below concluded that Trafficante was "logically indistinguishable" from actions under Title VII and that the purpose and structure of Title VII is "functionally identical" to that of Title VIII. The opinion lacks analysis of the legislative history of Title VII, which emphasized the need in our society for job equality and opportunities for advancement, and further totally fails to articulate

how allowing a Caucasian female to assert claims based on alleged injury to others could in any way serve to effectuate the statutory objectives of the 1964 Act.[3]

The twin goals of Title VII -- equality in employment opportunities and placing an identifiable injured person where he would have been if equality had not been denied -- cannot logically be equated with the statutory objective of the housing law, to eliminate segregated living patterns and enhance opportunities for interracial associations. In its unquestioning reliance on the Trafficante decision, the Court of Appeals has misconstrued the purposes and objectives of the 1964 Act by granting persons

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3. The consistent judicial rejection of claims for compensatory and punitive damages on the grounds that the statute does not provide for such relief and such awards would not effectuate the objectives of the Act [see, e.g., EEOC v. Detroit Edison Co., 515 F.2d 301, 308-10 (6th Cir. 1975) (pet. for cert. pending)] is directly relevant here. The Ninth Circuit's expansion of the scope of the Act is squarely contradictory to the reasoning of these cases construing the scope of the Act's remedial provisions.

not the object of discrimination the right to assert claims of others upon vague allegations of indirect injury. The court below has thus created an unfortunate precedent which can only serve to confuse the legitimate issues of employment discrimination raised by those with a tangible personal stake in its outcome and to detract from the statutory goals of eliminating arbitrary barriers to equality in job opportunities and making genuine victims whole.

Petitioners respectfully urge that the assistance of this Court is needed for a definitive statement of the purpose and interpretation of Title VII, toward a full effectuation of the statutory objective.

C. The Decision Below Expanding the Scope of Title VII Has Significance Far Beyond This Action.

The inevitable effect of the opinion below on all future Title VII actions is to allow any applicant or employee to bring suit under Title VII based on discrimination against classes to which he does not belong, as long as he alleges a loss of the right to interracial associations in his present or future employment. Such an unwarranted expansion of the scope of the

statute will diminish the availability of scarce judicial resources which could otherwise be engaged in effectuating the remedial purposes of the Act, and will have a substantial and recurring effect on the administration and trial of Title VII actions.

It cannot be disputed that Title VII trials are already exceedingly complex, even without the effect of the decision herein, involving not only a mass of individual factual determinations but legal issues of far-reaching social and economic importance. The accommodation of conflicting and competing interests affected by a Title VII decision is already a major consideration in interpreting and applying the remedial provisions of the Act. See, e.g., Franks v. Bowman Transportation Co., supra, 424 U.S. at ___, 44 U.S.L.W. at 4363-64.

The decision below can only magnify and unnecessarily complicate this complexity. Because Title VII trials will no longer be limited to "that sharp clash of adversary interests" [Baker v. Carr, 369 U.S. 186, 204 (1962)] raised by a class directly injured by discrimination, the district courts will face recurring problems of manageability and competing interests -- leading to confusion and

dilution of legitimate claims of injured persons.

The decision below will have the additional effect of further delaying resolution of already protracted Title VII litigation. The instant case provides specific example of the problems raised by the expansion of an action beyond allegations of direct discrimination affecting employment opportunities.

For these reasons, the trial courts throughout the country have repeatedly rejected attempts to expand the scope of Title VII actions beyond that which is necessary to protect the plaintiff and the class represented. See, e.g., National Organization of Women v. Bank of California, 6 F.E.P. 26 (N.D. Cal. 1973); Martin v. Safeway Trials, Inc., 59 F.R.D. 683, 684 (D.D.C. 1973); Bradshaw v. Zoological Society of San Diego, 10 F.E.P. 1269, 1271 (S.D. Cal. 1975); Jones v. United Gas Improvement Corp., 68 F.R.D. 1, 7-10 (E.D. Pa. 1975); Martinez v. Bechtel Corp., 11 F.E.P. 898, 904 (N.D. Cal. 1975).

Moreover, the court below gives no consideration to the problem of framing relief, already the frequent subject of concern in federal courts with the "usual" Title VII case. This Court has explicitly held that monetary relief in the

form of back pay to individuals who prove they have been measurably injured is a necessary remedy to effectuate the "make whole" objective of the statute. Albemarle Paper Co. v. Moody, supra, 422 U.S. at 417-21. Moreover, appropriate specific injunctive relief to identifiable victims must be available to put such victims where they would have been. Franks v. Bowman Transportation Co., supra, 424 U.S. at ___, 44 U.S.L.W. at 4365.

The Court of Appeals adds another dimension to the remedial difficulties inherent in Title VII -- the problem of fashioning appropriate and enforceable relief for claims of the absence of an integrated working environment. Clearly there is no "measurable" remedy for such purported injury, nor can a workable or enforceable order be envisioned.

Given the increased number, complexity and delay of Title VII actions, the foregoing are compelling reasons for this Court to grant certiorari for the purpose of making a definitive statement of the rights to be effectuated by Title VII actions, and the persons who have standing to assert such rights.

II

THE COURT BELOW HAS DECIDED THE FEDERAL QUESTION OF STANDING IN A MANNER INCONSISTENT WITH PRIOR DECISIONS OF THIS COURT

The principles underlying the concept of standing to sue were succinctly stated by this Court in Warth v. Seldin, 422 U.S. 490 (1975):

> In its constitutional dimension, standing imports justiciability: whether the plaintiff has made out a "case or controversy" between himself and the defendant within the meaning of Art. III. This is the threshold question in every federal case, determining the power of the court to entertain the suit. As an aspect of justiciability, the standing question is whether the plaintiff has "alleged such a personal stake in the outcome of the controversy" as to warrant his invocation of federal court jurisdiction and to justify exercise of the court's remedial powers on his behalf. Baker v. Carr, 369 U.S. 186, 204 (1962). The Art. III judicial power exists only to redress or otherwise to protect against injury to the complaining party, even though the court's judgment may benefit others collaterally. A federal court's jurisdiction therefore can be invoked only when the plaintiff has suffered "some threatened or actual injury resulting from the

> putatively illegal action . . . ." Linda R.S. v. Richard D., 410 U.S. 614, 617 (1973).

422 U.S. 498-99 (emphasis in original).

In addition to this minimum constitutional mandate, this Court has recognized other limits on the class of persons who may invoke the federal court's remedial powers. When the asserted harm is a "generalized grievance," that harm alone normally does not warrant the exercise of jurisdiction. Schlesinger v. Reservists to Stop The War, 418 U.S. 166, 188-97 (1974). Similarly, even when the plaintiff has alleged injury sufficient to meet the "case or controversy" requirement, this Court has consistently held that the plaintiff generally must assert his own legal rights and interests, and cannot rest a claim for relief on the legal rights of third parties. Barrows v. Jackson, 346 U.S. 249, 255-56 (1953).

Moreover, and of particular significance to this case, unless a plaintiff can demonstrate the requisite injury from a defendant, he is not a member of any class who may have been injured and cannot seek relief on behalf of himself or such class. O'Shea v. Littleton, 414 U.S. 488,

492 (1974); Bailey v. Patterson, 369 U.S. 31, 32-33 (1962); Hall v. Beals, 396 U.S. 45, 48-49 (1969).

These settled principles of standing were ignored by the Court of Appeals herein when it determined that a Caucasian female had standing to assert claims of racial and ethnic discrimination. In particular, the opinion below fails to consider the policy and prudential limitations on the unnecessary exercise of federal jurisdiction marked out by this Court; in granting Waters standing to assert the legal rights of third parties, the Court of Appeals ignores whether her "individual need requires the remedy for which [s]he asks." McCabe v. Atcheson, Topeka & Santa Fe Ry. Co., 235 U.S. 151, 164 (1914). See Schlesinger v. Reservists to Stop the War, supra, 418 U.S. at 221-22.[4]

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4. The necessity for granting relief no broader than is required to protect the tangible interest of the complaining party is particularly significant when viewed against the problems of fashioning a remedy for injuries to a working environment, discussed ante at 20.

Petitioners recognize that Congress may confer standing by statute to persons who might otherwise lack judicially cognizable injury. See Linda R.S. v. Richard D., supra, 410 U.S. at 617 n.3. However, as discussed ante, injuries to an employee's working environment are not within the "zone of interests" Congress intended to be protected by Title VII. Waters' complaint is that she has been harmed indirectly by putatively illegal actions aimed at others.

Petitioners respectfully submit that the decision below is inconsistent with the policy considerations underlying prior decisions of this Court. For this reason, in addition to the compelling need for this Court to define the scope and purpose of the 1964 Civil Rights Act, certiorari should be granted to mark the limits of a litigant's standing to assert the rights of others in federal courts.

CONCLUSION

It is respectfully urged that a writ of certiorari be granted for the foregoing reasons.

Dated: April 12, 1977.

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Appendices Follow

APPENDICES

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LAUREL WATERS, Plaintiff-Appellant, vs. HEUBLEIN, INC.; UNITED VINTNERS, INC. Defendants-Appellees.	)	No. 74-2870
LAUREL WATERS, Plaintiff-Appellant, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff-Intervenor-Appellant, vs. HEUBLEIN, INC.; UNITED VINTNERS, INC., Defendants-Appellees.	)	No. 74-2871 OPINION

Appeal from the United States District Court
for the Northern District of California

Before: CHAMBERS and DUNIWAY, Circuit Judges, and
PREGERSON,* District Judge

---

* The Honorable Harry Pregerson, United States District Judge for the Central District of California, sitting by designation.

DUNIWAY, Circuit Judge:

Plaintiff, Laurel Waters, filed this action in the district court under § 706 of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5, charging defendants Heublein and United Vintners with discriminatory employment practices against women, Blacks, and Spanish-surnamed Americans, and seeking compensatory and injunctive relief. The U.S. Equal Employment Opportunity Commission (EEOC) intervened as a plaintiff, see F. R. Civ. P. 24(b), 42 U.S.C. §§ 2000e-4(g)(6), 2000e-5(f)(1). The district court dismissed the claims of discrimination based on race and national origin, for lack of standing on Waters' part to assert them. The plaintiffs appeal invoking this court's jurisdiction under 28 U.S.C. § 1292(a). We reverse.

Laurel Waters, a white woman, was hired by defendant United Vintners in October, 1969. On June 18, 1970, she filed two complaints against her employer with the EEOC. The first alleged the following:

> I am doing the same job as men have done for more pay.
>
> I think women are discriminated against by this company by being hired in low-pay and low-status work compared to men, in job assignments and in promotions.

> I think the same is true of Negroes--they are discriminated against in the same way, as are other minority groups.

Later, she filed an amended charge. It repeated the sex discrimination claim, but did not mention racial or ethnic discrimination. Her third and final charge alleged that she was denied a raise in retaliation for filing her earlier complaints. After January 31, 1971, Waters ceased working for United Vintners. The reason for her leaving does not appear on the record.

In December, 1971, the District Director of EEOC made findings of fact bearing out the substance of the charges. EEOC failed to resolve the dispute with United Vintners through informal conciliation and issued to Waters a statutory notice of right to sue. She filed this action within 90 days of its receipt.

I. Appealability

28 U.S.C. § 1292(a) provides:

> The courts of appeal shall have jurisdiction to appeals from:
>
> (1) Interlocutory courts of the district courts of the United States . . . refusing . . . injunctions. . . .

We and other courts have interpreted § 1292(a) as allowing appeals from orders either narrowing the range of activity about which plaintiffs seeking an

injunction may complain, Spangler v. United States, 9 Cir., 1969, 415 F.2d 1242, 1247; Jones v. Diamond, 5 Cir., 1975, 519 F.2d 1090, 1095; or restricting the breadth of relief to which such plaintiffs might otherwise be entitled. Price v. Lucky Stores, Inc., 9 Cir., 1974, 501 F.2d 1177, 1179; Spangler v. United States, supra, 415 F.2d at 1247; Jones v. Diamond, supra, 519 F.2d at 1096. The order from which plaintiffs have appealed meets both tests. It bars Waters from asserting discrimination against Blacks and Spanish-surnamed Americans in her individual Title VII action; it also prevents her from seeking relief on behalf of those against whom the discrimination is directed. It is, therefore, appealable.

II. Exhaustion of Administrative Remedies

The defendants argue that Waters has not exhausted available administrative remedies for the purpose of eliminating discrimination against Black and Spanish-surnamed employees as required by § 706(b) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(b). We do not agree. The requirements of exhaustion are few. To comply with § 706(b), a plaintiff need do no more than file a timely charge with the EEOC and receive a notice of right to sue. McDonnell Douglas Corp. v. Green, 1973, 411 U.S. 792, 798; Beverly v. Lone Star Constr. Corp., 5 Cir., 1971, 437 F.2d

1136, 1139-40. The plaintiff is not barred from bringing suit by the EEOC's allegedly incomplete investigation or less than vigorous attempts at conciliation. McDonnell Douglas, supra; Dent v. St. Louis-San Francisco Ry., 5 Cir., 1969, 406 F.2d 399, 402. Nor does the failure to file the charges with an agency established by state or local civil rights laws as contemplated by 42 U.S.C. § 2000e-5(c), pose a jurisdictional barrier to suit. EEOC v. Wah Chang Albany Corp., 9 Cir., 1974, 499 F.2d 187, 189 n.3; Parker v. General Telephone Co., 9 Cir., 1973, 476 F.2d 595.

The defendants concede that Waters received statutory notice of right to sue; the only question is whether that notice encompassed charges of racial, ethnic and sex discrimination, or only charges of sex discrimination. Waters' first complaint to the EEOC charged the defendants with all three types of discrimination. Defendants argue that because Waters' "amended" charge mentioned only sex discrimination, she abandoned that portion of her earlier complaint alleging discrimination based on race and national origin. They buttress this argument by pointing out that in her complaints, in response to a question in the EEOC form that asked her to indicate what type of discrimination her charge dealt with, Waters checked only the box marked "sex." We cannot agree.

"Nothing in the Act commands or even condones the application of archaic pleading concepts. On the contrary, the Act was designed to protect the many who are unlettered and unschooled in the nuances of literary draftsmanship." Sanchez v. Standard Brands, Inc., 5 Cir., 1970, 431 F.2d 455, 465; accord Love v. Pullman Co., 1972, 404 U.S. 522, 526-27. It is the substance of the complaint, not its label, with which Title VII is concerned, and, as Judge Goldberg said in Sanchez, supra, "[i]n the context of Title VII, no one--not even the unschooled--should be boxed out." 431 F.2d at 463. Thus, the EEOC and the court had jurisdiction over the charges of racial and ethnic discrimination.

Moreover, although the record contains no evidence that those charges had been brought to the attention of state or local agencies before this action was filed, see 42 U.S.C. § 2000e-5(c), it does show that in August, 1973, while this action was pending, EEOC sent a copy of all three charges to the California Fair Employment Practices Commission (FEPC), and that on August 29, 1973, FEPC waived jurisdiction. This permits the court to proceed with the action in the case at bar. Motorola, Inc. v. EEOC, 9 Cir., 1972, 460 F.2d 1245, 1246; Parker v. General Telephone Co., supra, 476 F.2d at 596; Pacific Maritime Ass'n v. Quinn, 9 Cir., 1972, 465 F.2d 108; Love v. Pullman, Co., supra.

III. Standing

Waters is white. The discrimination charged here is directed at Blacks and Hispanic-Americans. Whether Waters has standing to sue to enjoin discrimination against groups to which she does not belong depends on whether she is a "person claiming to be aggrieved" by such discrimination. §§ 706(b), (f)(1) of the 1964 Civil Rights Act, 42 U.S.C. §§ 2000e-5(f)(1). We find this case logically indistinguishable from Trafficante v. Metropolitan Life Ins. Co., 1972, 409 U.S. 205, and we therefore agree with Waters that she has standing.

Trafficante concerned racial discrimination in housing in violation of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601-17. Two tenants--one white, one black--of an apartment complex owned and operated by the defendants brought suit to end discriminatory rental policies aimed at non-whites. The district court dismissed, finding the plaintiffs to be without standing. 322 F.Supp. 352. This court affirmed for the same reason. 466 F.2d 1158. A unanimous Supreme Court reversed, holding that the term "person aggrieved" in 42 U.S.C. § 3610(a) includes persons not themselves the objects of discrimination, who are injured "by the loss of important benefits from interracial associations." 409 U.S. at 209-10. That analysis of the standing question applies with equal force to actions brought under Title VII, the

purpose and structure of which is "functionally identical" to the fair housing legislation construed in Trafficante. Work Environment Injury Under Title VII, 83 Yale L.J. 1695, 1701-02 (1973).

We cannot agree with the view of the district court that Title VII is much narrower in scope than Title VIII:

> Title VIII was intended to ensure all persons a living environment free from unlawful discrimination. This court is not persuaded, however, that Congress sought through Title VII to protect whatever interest white persons might have in working in an environment which is free from discrimination against racial and ethnic minorities. Unlike Title VIII, which was intended to change living environments for all by changing housing patterns through ending housing discrimination, Title VII is aimed at lifting economically persons belonging to racial and ethnic minorities by providing equal access to employment opportunities.
>
> 8 EPD § 9522, at 5308 (footnote omitted).

We have no doubt that one of the purposes of Title VII is the purpose stated by the district court. But interpersonal contacts--between members of the same or different races--are no less a part of the work environment than of the home environment. Indeed, in modern America, a person is as likely,

and often more likely, to know his fellow workers than the tenants next door or down the hall. The possibilities of advantageous personal, professional or business contacts are certainly as great at work as at home. The benefits of interracial harmony are as great in either locale. The distinction between laws aimed at desegregation and laws aimed at equal opportunity is illusory. These goals are opposite sides of the same coin.

It is not significant that the EEOC has enforcement powers under Title VII which HUD does not have under Title VIII. Compare 42 U.S.C. § 2000e-5(b) with 42 U.S.C. §§ 3610(c),(d). Before the passage of Pub. L. No. 92-261, § 4(a) 86 Stat. 104, in 1972, the enforcement procedures of Titles VII and VIII were virtually identical. The 1972 legislation was designed to expand the coverage of and increase compliance with the equal employment opportunity provisions of Title VII. Conference Report on H.R. 1746, 1972 U.S. Code Cong. & Admin. News, 2179. We do not find in the language or history of the 1972 Act any intention to narrow the class of plaintiffs who might bring suit. To imply one would be inconsistent with the Act's manifest purpose.

Finally, we note that the extension of Trafficante to the Title VII area really makes no new law. In defining "person aggrieved" for Title VIII purposes,

the Supreme Court looked to the Third Circuit's opinion in Hackett v. McGuire Bros., Inc., 3 Cir., 1971, 445 F.2d 442, a Title VII action. 409 U.S. at 209. Our decision is but a reapplication of the same approach.

Our holding accords with the EEOC's own interpretations of §§ 706(b) and (f)(1). See EEOC Decision No. 72-0591 (1971), CCH EEOC Decisions (1973) ¶ 6193, at 4329; Note, Work Environment Injury, supra, 82 Yale L.J. at 1698 & n.29. "The administrative interpretation of the Act by the [EEOC] is entitled to great deference." Griggs v. Duke Power Co., 1971, 401 U.S. 424, 433-34.

It is important to note the limits of our decision. We hold only that Waters has standing to sue to redress racial and ethnic

discrimination.[1] We do not decide whether she is

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1. We are persuaded that the rather casual dictum, supported by no cited authority, in EEOC v. Occidental Life Ins. Co. of Calif., 9 Cir., 1976, ____ F.2d ____, ____, (No. 75-1706, May 11, 1976, slip op. at 13-14) should not be followed here. There, we said:

> It remains true that Ms. Edelson would not have had "standing" to charge Occidental with discrimination against unmarried female employees (Ms. Edelson was married), or against male employees with respect to retirement.

The question of Ms. Edelson's standing was not before us in that case; she was not a plaintiff. In the light of Trafficante, supra, we are convinced that the dictum is inapt in the case at bar, even if it were correct in the Occidental Life case.

In Occidental Life, EEOC was the sole plaintiff. In the case at bar, it intervened as a plaintiff. However, its presence does not permit us, on the authority of Occidental Life, to avoid deciding the question of Waters' standing. In its order granting EEOC permission to intervene, the district court provided:

> That the Equal Employment Opportunity Commission's motion for leave to intervene in this action is granted upon the condition that the claims are limited to and can be no broader than the claims maintained by, the class or classes represented by and the relief prayed for by plaintiff Laurel Waters in this action pursuant to orders of the Court.

an adequate class representative for Blacks and Spanish-surnamed Americans who may have been the objects of discrimination. See F. R. Civ. P. 23(a). That question remains open on remand.

Reversed and remanded for further proceedings.

PREGERSON, District Judge, concurring specially:

I concur wholeheartedly in Judge Duniway's scholarly opinion that applies a liberal approach to the question of standing in a civil rights class action. This approach is consistent with that taken by me in Manhart v. City of Los Angeles Dept. of W. & P., 387 F. Supp. 980 (C.D. Cal. 1975). Seven years ago, I denied class certification in Burney v. North American Rockwell Corp., 302 F. Supp. 86 (C.D. Cal. 1969). My ruling in Burney could be misconstrued as taking an overly restrictive view of standing and F.R.Civ.P. 23(a)(2)'s requirement of common questions of law and fact. In Burney, I erroneously treated the question of plaintiff's ability to "fairly and adequately" represent a broad-based class as a subset of standing, whereas the denial of class

certification properly should have rested solely on my determination that the named plaintiff failed to show that he could "fairly and adequately protect the interests of the class" as required by F.R.Civ.P. 23(a)(4).

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

LAUREL WATERS, Plaintiff, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Application for Intervention vs. HEUBLEIN, INC., a corporation, UNITED VINTNERS, INC., a corporation, Defendants.	No. C-73-1148 ACW

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS CLAIMS ALLEGING SEX DISCRIMINATION UNDER 42 U.S.C. § 1981, CLAIMS ALLEGING DISCRIMINATION AGAINST RACIAL AND ETHNIC MINORITIES, CLAIMS FOR COMPENSATORY DAMAGES; DENYING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT AND TO DISMISS CLAIMS FOR PUNITIVE DAMAGES; AND DENYING PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

Plaintiff's amended complaint alleges causes of action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. (hereinafter "Title VII"), the Civil Rights Act of 1866, 42 U.S.C. § 1981, and the Equal Pay Act of 1963, 29 U.S.C. § 206(d). Plaintiff, a white woman and former employee of Defendant United Vintners, alleges she is a member of a class of persons, including racial and ethnic minorities, who have been discriminated against by defendant's employment practices. The complaint seeks preliminary and permanent injunctions against defendants' allegedly discriminatory employment practices, general damages, and exemplary damages. Defendants have moved to dismiss or in the alternative for summary judgment as to plaintiff's first and second causes of action insofar as they purport to state claims a) on behalf of groups other than women, b) on behalf of plaintiff and other employees for injuries indirectly caused by alleged discrimination against minority groups, and c) on behalf of persons affected by defendant Heublein's own employment practices.

Defendants also move to dismiss plaintiff's claims for compensatory and punitive damages.

Plaintiff's first cause of action attempts to state a claim under Title VII on behalf of a class consisting of women and members of racial and ethnic minorities. The complaint alleges employment discrimination against these groups with respect to nine different conditions of employment. Plaintiff alleges that women and racial and ethnic minorities are directly injured by defendants' discriminatory acts and, in addition, that they suffer certain economic, social and psychological injuries because they work in an environment which is not free from discrimination. The second cause of action realleges everything that precedes it and adds a claim under 42 U.S.C. § 1981 based on injuries suffered by women as a result of discrimination against racial and ethnic minorities.

Causes of Action Under 42 U.S.C. § 1981

This Court ruled in its previous Order in this case, filed November 19, 1973, that plaintiff cannot state a cause of action under 42 U.S.C. § 1981 for employment discrimination against women. National Organization of

Women v. Bank of California, 6 FEP Cases 26, 29 (N.D. Cal. Dec. 14, 1972) (Peckham, J.); League of Academic Women v. Regents of University of Cal., 343 F. Supp. 636, 638-49 (N.D. Cal. 1972) (Renfrew, J.); Williams v. San Francisco Unified School District, 340 F. Supp. 438, 440 (N.D. Cal. 1972) (Harris, J.). The amended complaint will therefore be dismissed insofar as it seeks relief under 42 U.S.C. § 1981 for discrimination against women.

Standing to Maintain Racial and Ethnic Origin Claims

Defendants' motion to dismiss plaintiff's first and second causes of action raises the issue whether plaintiff has standing under Title VII to assert a claim of injury to herself on alleged discrimination against racial and ethnic groups to which she does not belong. The Supreme Court has endorsed the view that standing to sue under Title VII is as broad as permitted under Article III of the Constitution. Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205, 209 (1972); Hackett v. McGuire Bros., Inc., 445 F.2d 442, 446 (3d Cir. 1971). Article III limits standing

to plaintiffs who can demonstrate that their complaint presents a "case" or "controversy," Flast v. Cohen, 392 U.S. 83 (1968), and that the interest they seek to protect "is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." Data Processing Service v. Camp, 397 U.S. 150, 153 (1970).

In Trafficante v. Metropolitan Life Ins. Co., supra, the Court held that white persons have standing to sue a landlord for racial discrimination in housing under Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601, et seq. (hereinafter "Title VIII"). Title VIII was intended to ensure all persons a living environment free from unlawful discrimination. This Court is not persuaded, however, that congress sought through Title VII to protect whatever interest white persons might have in working in an environment which is free from discrimination against racial and ethnic

minorities.[1] Unlike Title VIII, which was intended to change living environments for all by changing housing patterns through ending housing discrimination, Title VII is aimed at lifting economically persons belonging to racial and ethnic minorities by providing equal access to employment opportunities. See Developments In the Law--Employment Discrimination and Title VII, 84 Harv L. Rev. 1109, 1114 (1971). Persons who are not the objects of racial or ethnic discrimination in employment are not within the zone of interests Congress intended to protect with Title VII, accordingly, the complaint will be dismissed insofar as it alleges a cause of action based on discrimination against racial and ethnic minorities.

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1. "The various rules of standing applied by federal courts have not been developed in the abstract. Rather, they have been fashioned with specific reference to the status asserted by the party whose standing is challenged and to the type of question he wishes to have adjudicated." Flast v. Cohen, supra, at 101.

Punitive Damages

Plaintiff is entitled to recover punitive damages under Title VII if she can prove defendants acted with the necessary malice. Stamps v. Detroit Edison Co., 365 F. Supp. 87, 124 (E.D. Mich. 1973); see also Tooles v. Kellogg Co., 336 F. Supp. 14, 18 (D. Neb. 1972). Recovery of compensatory damages, however, is beyond the scope of what Congress intended Title VII to encompass. See Developments in the Law--Employment Discrimination and Title VII, supra, at 1259-69 (1971); Tooles v. Kellogg Co., supra. Accordingly, the claim for compensatory damages will be stricken from the complaint.

Causes of Action Against Heublein

Defendants have also moved to dismiss the complaint insofar as it alleges an independent cause of action against defendant Heublein. While Heublein might be responsible for the acts of its subsidiary, defendant United Vintners, Inc., plaintiff lacks standing to maintain a claim against Heublein on the basis of Heublein operations in which plaintiff was not involved. See LaMar v. H & B Novelty &

Loan Company, ____ F.2d ____ (9th Cir. filed Dec. 7, 1973). Accordingly, defendants' motion to dismiss the complaint insofar as it purports to state an independent cause of action against defendant Heublein will be granted.

Preliminary Injunction

This action will now be treated as one against United Vintners, Inc., based on sex discrimination. Plaintiff bases her motion for preliminary injunction largely on documentation compiled in 1970 concerning defendant United Vintners' employment statistics. This documentation does not make out a prima facie case of employment discrimination when considered in the context of the whole record in this case. On December 4, 1970, J.C. Williams, Director of Personnel of United Vintners, distributed to all plans and locations of the corporation an affirmative action program which was to become effective immediately. See Exhibit C attached to DEFENDANTS' ANSWERS AND OBJECTIONS TO PLAINTIFF[S]' FIRST INTERROGATORIES PROPOUNDED TO ALL DEFENDANTS, filed Oct. 1, 1973. The affirmative action program announced in December 1970 represents an effort by United Vintners to comply with the requirements of

Executive Order No. 11246, prohibiting employment discrimination by businesses holding government contracts, and regulations promulgated to implement the Executive Order. Compliance with the Executive Order and with the regulations issued pursuant to it would be a satisfactory showing by United Vintners that they are not in violation of Title VII; both the Executive Order and Title VII contemplate the same result. Plaintiff's statistical case, which does not reflect whatever might have been achieved by the affirmative action program United Vintners announced in December 1970, does not justify the entry of a preliminary injunction against United Vintners. Accordingly, the motion for a preliminary injunction will be denied.

ORDER

These motions having come before the Court, and the written and oral arguments of counsel having been considered, and a decision having been rendered,

IT IS HEREBY ORDERED that plaintiff's complaint be DISMISSED insofar as it alleges a cause of action for discrimination against women under 42 U.S.C. § 1981, and

IT IS FURTHER ORDERED that plaintiff's complaint be DISMISSED insofar as it alleges a cause of

action based on discrimination against racial and ethnic minorities, and

IT IS FURTHER ORDERED that defendants' motion to dismiss all claims for punitive damages is DENIED, and

IT IS FURTHER ORDERED that defendants' motion to dismiss all claims for compensatory damages is GRANTED, and

IT IS FURTHER ORDERED that plaintiff's complaint is DISMISSED insofar as it alleges a cause of action against defendant Heublein on the basis of Heublein operations in which plaintiff was not involved, and

IT IS FURTHER ORDERED that defendants' motion for summary judgment is DENIED, and

IT IS FURTHER ORDERED that plaintiff's motion for a preliminary injunction is DENIED.

Dated: June 27, 1974.

Albert C. Wollenberg
United States District Judge

APPENDIX C

STATUTE INVOLVED

Section 703(a) of Title VII of the Civil Rights Act of 1964 [42 U.S.C. § 2000e-2(a)] provides:

> (a) It shall be un unlawful employment practice for an employer--
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
>
> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color religion, sex or national origin.

Section 706(f)(1) of Title VII [42 U.S.C. § 2000e-5(f)(1)] provides in relevant part:

> If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this Section . . . or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, . . . shall so notify the person aggrieved and within ninety days after giving of such notice, a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) . . . by any person whom the charge alleges was aggrieved by the unlawful employment practice . . . .

Section 706(f)(3) of Title VII [42 U.S.C. § 2000e-5(f)(3)] provides:

> Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this Title.

Section 706(k) of Title VII [42 U.S.C. § 2000e-5(k)] provides:

> In any action or proceeding under this title, the court may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

CONSTITUTIONAL PROVISIONS

Article III, Section 2 of the Constitution of the United States provides:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their

Authority; --to all cases of admiralty and maritime Jurisdiction; --to Controversies between two or more States; --between Citizens of the same States claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.